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Communications concerning the status of women

Report of the Secretary-General assessing the implications of the reforms of mechanisms in the human rights area (1503 procedure) for communications concerning the status of women

Introduction

1. At its forty-fifth session, the Commission on the Status of Women adopted decision 45/103 concerning the report of the Secretary-General (E/CN.6/2001/12) assessing the implications of the reforms of mechanisms in the human rights area (1503 procedure) for communications concerning the status of women. In that decision, the Commission, having considered the report of the Secretary-General submitted at its forty-fifth session assessing the implications of the reforms of mechanisms in the human rights area for communications concerning the status of women and the views expressed in that regard by Member States, decided to request the Secretary-General to submit another report on the communications procedure of the Commission and ways and means to make it more effective and efficient, based, inter alia, on written opinions of Member States and taking into account discussions at the forty-fifth session of the Commission. The comprehensive report, which might contain recommendations, should be submitted to Member States in a timely manner prior to the forty-sixth session of the Commission for consideration at that session.[1] The present report is submitted in accordance with that decision.

I. Background

Mandates of the Commission on the Status of Women and the Commission on Human Rights

2. The communications procedure of the Commission on the Status of Women was established pursuant to Economic and Social Council resolutions 76 (V) of 5 August 1947, 304 I (XI) of 14 and 17 July 1950, 1983/27 of 26 May 1983, and 1992/19 of 30 July 1992. Under those resolutions, the mandate of the Commission is to consider confidential and non-confidential communications on the status of women.

3. In accordance with Economic and Social Council resolution 1983/27, communications are first

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considered by a sessional Working Group composed of five members of the Commission representing geographical regions. The role of the Working Group is:

(a) To consider in closed meetings all communications (including the replies of Governments), with a view to bringing to the Commission's attention those that "appear to reveal a consistent pattern of reliably attested injustice and discriminatory practices against women" (Economic and Social Council resolution 1983/27, para. 4 (a));

(b) To prepare a report that "will indicate the categories in which communications are most frequently submitted to the Commission" (Economic and Social Council resolution 1983/27, para. 4 (b)).

4. The Working Group reports to the Commission on the Status of Women at each session and, following its consideration of the report, the Commission may make recommendations to the Economic and Social Council on action the Council may wish to take in relation to the "emerging trends and patterns of communications" (Economic and Social Council resolution 1983/27, para. 5). The Commission is not authorized to take any other action.

5. The 1503 procedure of the Commission on Human Rights is based on Economic and Social Council resolutions 75 (V) of 5 August 1947, 728 F (XXVIII) of 30 July 1959, 1235 (XLII) of 6 June 1967, 1503 (XLVIII) of 27 May 1970 and 2000/3 of 16 June 2000. Pursuant to Council resolution 1235 (XLII), the Commission on Human Rights is empowered to "examine information relevant to gross violations of human rights" (para. 2) contained in communications and, in appropriate cases, to "make a thorough study of situations that reveal a consistent pattern of violations of human rights ... and report, with recommendations thereon, to the Council" (para. 3).[2] Under Council resolution 2000/3, which revised the confidential procedure introduced under Council resolution 1503 (XLVIII) ("the 1503 procedure"), the Working Group on Communications of the Subcommission on the Promotion and Protection of Human Rights examines communications alleging violations of human rights and any governmental replies "with a view to bringing to the attention of the Working Group on Situations" (of the Commission on Human Rights) "any particular situations that appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms" (Council resolution 2000/3, para. 2).

6. The Working Group on Communications meets after the annual session of the Subcommission on the Promotion and Protection of Human Rights, and the Working Group on Situations meets at least one month before the session of the Commission on Human Rights in order to examine the report and recommendations of the Working Group on Communications and determine whether or not to refer particular situations before it to the Commission on Human Rights, and to examine the situations kept under review by the Commission. In the latter cases, the Working Group places before the Commission on Human Rights "a confidential report identifying the main issues of concern, normally together with a draft resolution or decision recommending the action to be taken by the Commission" (Economic and Social Council resolution 2000/3, para. 5).

7. After discussing the situation with the country concerned at closed meetings, the Commission on Human Rights decides on the appropriate action to take. The action should be one of the following:

> "(a) To discontinue consideration of the matter when further consideration or action is not warranted;
>
> "(b) To keep the situation under review in the light of any further information received from the Government concerned and any further information that may reach the Commission under the 1503 procedure;
>
> "(c) To keep the situation under review and to appoint an independent expert;
>
> "(d) To discontinue consideration of the matter under the confidential procedure governed by Economic and Social Council resolution 1503 (XLVIII) in order to take up consideration of the same matter under the public procedure governed by Council resolution 1235 (XLII)" (Economic and Social Council resolution 2000/3, para. 7 (d)).

8. Under the communications procedure of the Commission on the Status of Women, communications are viewed merely as sources of information for identification of trends and patterns in the violation of the human rights of women and as a basis for general recommendations and policy-making. The Commission

is not empowered to focus on country situations as such or to conduct investigations or take any other country-specific measures. On the other hand, the focus of the 1503 procedure is the identification of country situations in which there appear to be serious violations of human rights and the examination of those situations with a view to adopting measures that might alleviate the situations.

II. Forty-fifth session of the Commission on the Status of Women

9. The report of the Secretary-General (E/CN.6/2001/12) submitted to the Commission on the Status of Women at its forty-fifth session raised several issues in connection with the operation of the two communications procedures, in particular in respect of the consideration of 1503 communications by the Commission on the Status of Women.[3] These issues included the following: the fact that, in preparation of the lists of communications, a partial summary of a 1503 communication (including only the aspects relating to gender-specific violations) could distort the overall gist of a communication and make it difficult to evaluate a government response (para. 26); the fact that Governments were not made aware that 1503 communications were also being considered by the Commission on the Status of Women (para. 32); the fact that the different annual cycles of the two procedures meant in some cases that 1503 communications were considered by the Commission on the Status of Women without the benefit of a government reply (para. 37); and the sharing of information (summaries of certain 1503 communications, the communications themselves, and any government replies) between the Office of the United Nations High Commissioner for Human Rights and the Division for the Advancement of Women of the United Nations Secretariat (para. 39). The report set out a number of options to address these issues, such as including the full summary of each 1503 communication in the lists of communications provided to the Commission on the Status of Women (para. 27); informing each Government concerned that a 1503 communication would also be considered by the Commission on the Status of Women (para. 33); and synchronizing the timetables of the two procedures (paras. 38 and 41).

10. The Secretary-General's report presented a number of options for further improving the procedure of the Commission on the Status of Women. These included the transformation of the communications procedure into a "situations" mechanism, similar to the revised 1503 procedure, but involving the existing Working Group on Communications of the Commission on the Status of Women, and then the plenary Commission (para. 54 (a)); the transformation of the communications procedure into a "situations" mechanism, but establishing a working group of independent experts to carry out the preliminary review functions for the plenary Commission (para. 54 (b)); the appointment of a special rapporteur of the Commission who would take over the function of the Working Group, and report to the Commission on the communications received (para. 54 (c)); and the appointment of a thematic special rapporteur of the Commission, whose primary task would be to collect information (including receiving communications) and prepare a detailed report on a particular topic which could then be used as a basis for further policy development by the Commission (para. 54 (d)).

11. During the discussion of the Secretary-General's report, Member States recognized the need to review and improve the communication procedure of the Commission, and most suggested that the communication procedure should be strengthened and enhanced. Several Member States expressed concern that some of the proposals in the Secretary-General's report could result in duplication of the existing procedures of Charter of the United Nations-based bodies, including the 1503 procedure of the Commission on Human Rights, or communications procedures established under human rights treaties. Several Member States expressed concern about the sharing of confidential information between the Commission on Human Rights and the Commission on the Status of Women. Some Member States indicated that the Secretary-General's report was a good starting point for review of the communications procedure of the Commission on the Status of Women. Many Member States expressed support for the recommendation that Governments concerned be informed that communications with gender aspects received by the Commission on Human Rights under the 1503 procedure would be forwarded to the Commission on the Status of Women. Some suggested that the cycles for communications under the Commission on the Status of Women and 1503

communications procedures should be synchronized to enable Member States to respond to communications.

III. Written opinions submitted by Member States

12. As at 10 December 2001, six Member States, including one on behalf of the European Union (EU), had responded to the Secretary-General's request for submissions relevant to the Secretary-General's report submitted at the forty-fifth session of the Commission on the Status of Women.[4]

13. With regard to the preparation of the lists of communications, Argentina was in favour of the option presented in the Secretary-General's report submitted to the Commission at its forty-fifth session whereby the full summary of each 1503 communication would be provided to the Commission. In respect of the receipt of communications, Argentina was inclined towards the option presented in the Secretary-General's report whereby the annual cycles of the Commission and the 1503 communications procedures would be synchronized.

14. With respect to the issue of determining whether the Commission's communication procedure had been effective in meeting the objectives for which it was adopted, or whether it had some other use, or, if not, whether the procedure could be transformed into a mechanism that would better promote women's human rights within the framework of the activities of the Commission, Argentina indicated that the Optional Protocol[5] to the Convention on the Elimination of All Forms of Discrimination against Women,[6] which had entered into force on 22 December 2000, should be considered in this regard, as the Optional Protocol foresaw the receipt of communications by individuals or groups of individuals, under the jurisdiction of a State party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State party (article 2).

15. Argentina explained that, under the Optional Protocol, at any time after the receipt of a communication, and before a determination on the merits had been reached, the Committee on the Elimination of Discrimination against Women might transmit to the State party concerned for its urgent consideration, a request that the State party take such interim measures as might be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation (article 5, para. 1). Argentina further explained that if the Committee received reliable information indicating grave or systematic violations by a State party of rights set forth in the Convention, the Committee should invite that State party to cooperate in the examination of the information and to that end to submit observations with regard to the information concerned (article 8, para. 1).

16. Taking into account the above and in order to be able to determine whether there was a need to formulate changes to the Commission's communications procedure, Argentina indicated that it would be helpful if the next report of the Secretary-General specified the experiences of, and the effects that had been undergone within, the Committee on the Elimination of Discrimination against Women since the entry into force of the Optional Protocol.

17. Canada recognized that a review of the Commission's communications procedure was timely in light of the recent review of the 1503 procedure, the entry into force of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the forthcoming review of the working methods of the Commission. Canada indicated that such a review should not only examine the effects of reforms of the 1503 procedure, but also provide an overall evaluation of the Commission's communications procedure. The review should also be founded on a consideration of the Commission's mandate and ensure that the communications procedure was able to fulfil its designated role in achieving that mandate. Canada further indicated that options for reform should be examined from a perspective based on a number of concerns. These included "the gap" that the procedure sought to address; cost-efficiencies for the United Nations system; reduced duplication among United Nations mechanisms, so that, inter alia, States should not have to respond to multiple processes for essentially the same problem; raising public awareness of the available complaints mechanisms; decreasing the "political" aspects of the United Nations human rights system and encouraging mainstreaming of women's human rights and the development of expertise in gender analysis; improving the promotion and protection of women's human rights and the elimination of gender discrimination; and promoting more effective use of the information derived from the

communication procedure to identify key trends and emerging issues related to women's human rights and gender equality which would lead to the development of concrete actions to address the situations concerned.

18. Canada indicated that the Commission's communications procedure was intended to contribute to the ability of the Commission to make general recommendations on policy to the Economic and Social Council. The Commission's confidential communications procedure was therefore distinct from the 1503 procedure, which resulted in the identification of country situations and the adoption of measures that might alleviate those situations.

19. With regard to section III of the Secretary-General's report submitted to the Commission at its forty-fifth session on the operation of the Commission's communications procedure and the 1503 communications procedure and the relationship between them, Canada felt that the procedural issues identified in that section could largely be improved by informing Governments when 1503 communications were taken up for consideration by the Commission. Canada indicated that it preferred that the Commission did not consider 1503 communications, unless they were erroneously submitted under the 1503 procedure. However, if the practice of transmitting 1503 communications to the Commission continued, Canada recommended that the Division for the Advancement of Women provide the Commission with a full summary of each 1503 communication included in the list of communications, highlighting aspects that raised gender-specific violations or violations of women's human rights; inform the Government concerned that the 1503 communication was also being considered under the Commission's procedure, about the aspects of the communication being considered for violations of women's human rights, and about the Commission's timetable for replies; inform the author that the communication was also being considered by, or referred to, the Commission, and provide basic information on the Commission's communications procedure and any other relevant communications processes; and provide the Government concerned with sufficient time to reply before a communication would be considered under the Commission's procedure.

20. Canada indicated that if Governments were informed that a communication would be considered under both the 1503 and the Commission's communications procedures, they could decide whether a communication required one or more replies, and would be better able to address the gender issues raised by the communication. Canada felt that it was not necessary to synchronize the timetables of the two procedures, provided that the timetable for one procedure did not pre-empt the timetable for the other procedure. Canada believed that Governments should be given sufficient time to reply before a communication was considered under a procedure.

21. Referring to the discussion in section IV.A of the Secretary-General's report submitted to the Commission at its forty-fifth session on further options for improving the effectiveness of the procedure of the Commission on the Status of Women, Canada indicated that it favoured transforming the Commission's communications procedure into one that went beyond its original function of providing general information, to one providing a mechanism for the consideration of situations in particular countries and themes specific to women's human rights. Canada indicated that it preferred giving such work to a working group of independent experts who would carry out the preliminary review of communications for the Commission. Canada expressed the view that communications should be inadmissible if the matter was before another international human rights process. Canada recognized that such work could be carried out by the existing Working Group on Communications of the Commission on the Status of Women, and that such an approach was less disruptive and could therefore find more support. In order to have sufficient time to consider communications properly, Canada suggested that the Working Group on Communications of the Commission on the Status of Women should be constituted and convened prior to the session of the Commission, and that selection of candidates could occur at the intersessional meeting of the Commission prior to its regular session.

22. Canada indicated that any changes to the Commission's communications procedure should ensure effective use of the information produced by the Working Group on Communications of the Commission on the Status of Women to enhance the ability of the Commission to develop and recommend policy advice to promote women's human rights and gender equality, including country-specific and thematic issues of concern to women's human rights and gender equality. Noting that although the Commission was mandated to make recommendations

to the Economic and Social Council with respect to the report of the Working Group on Communications, the Commission had rarely exercised this mandate in practice, Canada indicated that the Commission should be encouraged to recommend actions resulting from consideration of the Working Group's report. Examples of such actions could include further examination of an issue or trend by the Secretariat, or by an independent body such as a special rapporteur, which could include recommendations to be considered by the Commission under its agenda item on emerging issues, trends and new approaches to issues affecting the situation of women or equality of women and men. Canada believed that such a practice would not only make more effective use of the information produced under the Commission's communications procedure but also provide a source of information for action under that agenda item, which was not being sufficiently employed by the Commission.

23. While recognizing that it was the prerogative of any Member State to propose the creation of a special rapporteur through a resolution or decision of the Commission, Canada suggested that the Commission should consider the creation and use of special rapporteur mechanisms to assist in the effective realization of the Commission's mandate and specifically of the communications procedure. Canada indicated that such a mechanism would prove useful in conducting further examinations of issues where the available information was insufficient and where further investigation might be warranted in order for the Working Group to "identify a consistent pattern of reliably attested violations". Canada further indicated that any mechanism should have a clearly articulated mandate and avoid duplication or overlap with other parts of the United Nations system, in particular special rapporteurs with mandates in other United Nations bodies.

24. In Canada's view, when an individual sends a communication to a United Nations body, that communication should be considered only once by the most appropriate body and process. This would be determined based on an established hierarchy of expertise and the nature of the complaint. In that way, if a communication came from a State that was party to an applicable individual complaint mechanism, the communication would be sent to the relevant committee rather than to a special rapporteur or a commission.

25. With respect to complaints related to gender discrimination and violations of women's human rights, Canada indicated that it was the responsibility of each mechanism within the United Nations system to address those issues under their spheres of competence, so that a communication concerning gender discrimination or violations of women's human rights should not automatically be directed towards the Commission or the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. For example, a communication concerning torture of a woman or women, should be considered by the Committee against Torture or under the 1503 procedure, depending on the nature of the complaint, and the body that had the competence to deal with the issue. Information on complaints and the outcome of consideration by the relevant bodies could be shared with all processes for information, while action or redress would be focused in the best applicable process.

26. Canada indicated that the current criteria for the consideration of communications should involve discrimination against women and the appearance of revealing a consistent pattern of gross and reliably attested injustice and discriminatory practices against women. While Canada agreed that the primary criteria should subsist on the basis of gender or sex discrimination, considering the mandate of the Commission, the compounding and intersecting effects of other factors on gender discrimination, such as those based on, inter alia, race, culture, ethnicity and sexual orientation, should also be recognized. Canada felt that the intersection of such factors should be taken into account in the analysis of any communication considered by the Working Group.

27. Canada considered that individuals should receive information on the routing of their communication, and general information on all United Nations human rights communications processes; that individuals could request a particular procedure but could not have access to more than one procedure for the same complaint; and that Governments should not have to reply to several bodies in respect of the same matter.

28. China indicated that, with the purpose of acquiring information about, and reflecting the main issues and trends of, the global women's cause, the Commission's communications procedure had played a positive role in the formulation of policies and strategies by the Commission. China considered that

the reform of the Commission's communications procedure should be carried out in accordance with the goals of the Commission and the principles of relevant General Assembly resolutions on the reform of human rights mechanisms. China indicated that full use should be made of existing resources and the potential of existing resources should be fully tapped; that emphasis should be placed on the practical effect of the Commission's communications procedure; and that communication and coordination between the Commission on the Status of Women and the Commission on Human Rights should be strengthened to avoid duplication.

29. China was of the view that the focus of the Commission should be to promote the follow-up and effective outcome of the Beijing Platform for Action[7] and the outcome document[8] of the twenty-third special session of the General Assembly, entitled "Women 2000: gender equality, development and peace for the twenty-first century", and to enhance the study of women's situation globally and development trends in that regard. China considered that the international community should carry out effective international cooperation to avoid shifting the focus of the Commission so that the promotion of the harmonious cooperative atmosphere of the Commission would not be hindered. China was of the view that the reform of the Commission's communication procedure concerned many complicated elements; that all parties needed to be consulted and the reform should be on the basis of consensus; and that this was not the appropriate time to assess the implications of the reforms of the 1503 procedure for the communications procedure of the Commission.

30. The European Union (EU) stated that, in assessing the Commission's communications procedure, it was important not to lose sight of its primary goal, and that communications were viewed as sources of information for identification of trends and patterns in the violation of women's human rights in order to assist the Commission in its task of policy formulation and development of strategies for the advancement of women. EU requested the Secretary-General to examine the manner in which the communications procedure could most effectively assist the Commission in its task of policy formulation and strategy development and, where appropriate, to propose options for improvement.

31. EU requested the Secretary-General to examine the feasibility of strengthening publicity efforts regarding the Commission's communications procedure as many members of the public, including individuals and non-governmental organizations, did not seem to be aware of the existence of the procedure, or did not always understand its objective. EU believed that the transmission of communications by the 1503 secretariat to the Division for the Advancement of Women had to be considered, as some aspects seemed to be creating technical difficulties. It supported many of the options for the fine-tuning of the existing administrative and procedural arrangements contained in section III of the report of the Secretary-General submitted to the Commission at its forty-fifth session. EU requested the Secretary-General to examine the effectiveness of the existing procedure with regard to the processing of communications by the Working Group on Communications of the Commission on the Status of Women, and by the Commission as a whole, and to propose options for improvement. To facilitate consideration of the communications by the Working Group, EU felt that more public information could be put at the disposal of the Working Group, such as the concluding comments of the Committee on the Elimination of Discrimination against Women, and the relevant aspects of reports of the special rapporteurs of other functional commissions and of the special representatives of the Secretary-General.

32. EU believed that reform of the Commission's communications procedure should be considered in the context of other human rights communications procedures to ensure synergy between the different mechanisms. EU took note with interest of the four options mentioned in paragraph 54 of the report of the Secretary-General submitted to the Commission at its forty-fifth session, and requested the Secretary-General to elaborate on these alternatives, in particular by indicating in which way each of them would contribute to enhancing the effectiveness of the procedure.

33. EU indicated that the 1503 procedure communications forwarded to the Division for the Advancement of Women constituted a source of information, and that restriction of that source would make the Commission's communications procedure less effective. Hence, EU was strongly in favour of maintaining and fine-tuning the practice of sharing of information under the two confidential procedures, which had been in operation since at least 1972 without

any objections to it being expressed in any resolutions or decisions of the Commission on the Status of Women or the Commission on Human Rights, or the Economic and Social Council. EU requested the Secretary-General to elaborate on the history and the origins of this practice. EU made reference to paragraph 221 of the Beijing Platform for Action, in which improved cooperation and coordination between the Commission on the Status of Women, the United Nations High Commissioner for Human Rights and the Commission on Human Rights were called for; and to paragraph 317, in which the General Assembly and the Council were "invited to review and strengthen the mandate of the Commission on the Status of Women, taking into account the Platform for Action as well as the need for synergy with other related commissions and Conference follow-up, and for a system-wide approach to its implementation". In the view of EU, the linkage between the 1503 and the Commission's communications procedures was a good example of cooperation and coordination between human rights mechanisms.

34. Mexico indicated that there was a need to regularize, in consultation with the Governments, the de facto situation that had occurred since 1972 with respect to the sharing of information between the Commission on Human Rights and the Commission on the Status of Women, since such sharing of information lacked a legal basis in accordance with the procedures of the Organization and resulted at times in unnecessary duplication in respect of the 1503 procedure and the communications procedure established under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. Mexico stated that it would be for the Economic and Social Council at its next substantive session in 2002 to achieve a consensus about normalizing the communications procedures, most probably by establishing such a mandate in a resolution.

35. Mexico believed that communications involving violations of the human rights of individuals or groups of individuals should be dealt with in accordance with the corresponding complaints procedures established under the Optional Protocol in the event that the Member State concerned had ratified the Optional Protocol. However, strengthening the Commission's communications procedure would permit the Commission to receive the largest possible number of communications so that a complaints procedure would be available for women from States that were not parties to the Optional Protocol. Mexico was of the view that it was important to define the admissibility criteria with respect to communications that would be considered by the Working Group on Communications of the Commission on the Status of Women (as was the case for the 1503 procedure), setting out discrimination on the basis of sex as the basic condition for acceptance of a communication by the Working Group. It also recommended the wide dissemination of the Commission's communications procedure so that the general trends of the situations of human rights in the world could be identified.

36. Mexico indicated that it would be able to support the consideration of country situations in the Commission under norms similar to those established under the 1503 procedure. However, Mexico highlighted that, since the consideration of country situations by the Commission could become politicized, it was important to recognize the competence of the international community, through the Commission, to pronounce on situations where systematic violations of women's rights on the basis of sex or gender existed.

37. Mexico believed that, since the Governments were not aware of the communications that the Office of the United Nations High Commissioner for Human Rights transmitted to the Division for the Advancement of Women, the Secretariat should inform the Governments concerned when such a communication was introduced under the Commission's communications procedure and should set a deadline for the Government's response. Otherwise, the Governments would not be given the right of defence through submission of evidence or clarification in respect of individual cases. Mexico indicated that the creation of a special rapporteur could duplicate the work of the Commission on Human Rights, in particular the Special Rapporteur on violence against women, its causes and consequences. However, Mexico could support the creation of a thematic rapporteur, under a precise and limited mandate related to the general trends, the identification of which was one of the objectives of the communications procedure of the Commission on the Status of Women.

38. Without wanting to limit the consensus reached during the subsequent sessions of the Commission on the Status of Women, Mexico emphasized that the most

important achievement would be the incorporation of a gender perspective in the work of all human rights mechanisms in the United Nations system. Mexico indicated that it was very important to improve the capacity of the Division for the Advancement of Women and the Office of the United Nations High Commissioner for Human Rights, with the objective of achieving a clear and coordinated system that would permit the Working Group on Communications to count on the resources necessary to detect systematic practices and to enhance its consideration of the complaints.

39. The Russian Federation expressed the view that the implementation of the proposals contained in section IV of the report of the Secretary-General submitted to the Commission at its forty-fifth session, such as the consideration of country situations in the Commission on the Status of Women, the establishment of an ad hoc working group of independent experts and the appointment of a special rapporteur on communications and thematic special rapporteurs in critical areas, could adversely affect the work of the Commission. Moreover, such a scheme for the consideration of communications in the Commission on the Status of Women would virtually duplicate the working methods of the Commission on Human Rights. The Russian Federation was also of the view that consideration of reports concerning United Nations activities in the area of women's issues would become significantly more effective following the entry into force of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, pursuant to which the Committee on the Elimination of Discrimination against Women had the authority to receive and consider communications and to follow up on cases where women's rights had been violated.

40. The Russian Federation hoped that the new report of the Secretary-General would provide an explanation of the legal basis for the transmission by the Office of the United Nations High Commissioner for Human Rights to the Division for the Advancement of Women of communications considered under the 1503 procedure. The Russian Federation believed that, if no firm decision had been made in this regard by the General Assembly, the Economic and Social Council or the Commission on Human Rights, such a practice should be stopped and the Commission on the Status of Women should consider only those reports that had been submitted to it directly.

IV. Conclusion

41. Based on the discussions of Member States at the forty-fifth session of the Commission and the written opinions submitted by Member States, there appear to be two approaches to reforming the communications procedure of the Commission on the Status of Women.

Minor modifications to existing procedure

42. Under the first approach, the communications procedure of the Commission on the Status of Women would remain as it is, with minor modifications. In such a case, communications would continue to be viewed merely as sources of information for identification of trends and patterns in the violation of women's human rights and as a basis for policy-making. The use of the procedure for policy-making could be strengthened by the Commission's making greater use of the reports of the Working Group as a basis for recommending appropriate action by the Economic and Social Council. In identifying trends and patterns and making recommendations for policy, the Working Group could examine information from other sources, such as the reports of the thematic and country special rapporteurs and working groups of the Commission on Human Rights. The Commission on the Status of Women could also consider choosing the members of the Working Group in advance of the session in which they were to serve so that they could receive the lists of communications in advance and prepare themselves more fully for the work of the Working Group.

43. With regard to the sharing of information between the Office of the United Nations High Commissioner for Human Rights and the Division for the Advancement of Women,[9] this practice could be discontinued, and efforts made to ensure that violations of women's human rights were taken up appropriately under the 1503 procedure and the relevant results made available to the Commission on the Status of Women. Alternatively, if the practice was to continue, some of the options presented in the report of the Secretary-General submitted to the Commission at its forty-fifth

session could be adopted to address the issues that had been raised in connection with the practice, such as informing the Government concerned that a 1503 procedure communication would be considered by the Commission on the Status on Women, and indicating relevant deadlines; and providing full summaries of 1503 procedure communications to the Working Group.

44. It should be noted that the current communications procedure of the Commission on the Status of Women is publicized on the web site of the Division for the Advancement of Women. A brochure on the procedure that gives practical information to the public could also be prepared.

Changes in the nature of procedure

45. The second approach would involve more fundamental changes in the nature of the communications procedure. As mentioned in the report of the Secretary-General submitted to the Commission at its forty-fifth session, one option would be to transform the procedure into a gender-specific "situations" mechanism, similar to the 1503 procedure, with communications being reviewed by the existing Working Group on Communications, or by a working group of independent experts. This would allow the Commission to investigate alleged widespread violations of women's rights in particular countries.[10] Another option would be to appoint a special rapporteur to take over the function of the Working Group and report to the Commission on the Status of Women on the communications received, in a procedure similar to that of the thematic special rapporteurs of the Commission on Human Rights. This would provide more of an avenue for redress of individual grievances. The appointment of a thematic special rapporteur to collect information and report on a particular topic would be a third option. Any of the above changes would allow the Commission to undertake more in-depth examinations of situations involving violations of women's rights.

46. In examining these options, consideration would need to be given to coordination with existing human rights mechanisms and procedures, and avoiding duplication and overlap. It should be noted that all the civil and political — and a number of the economic and social — thematic mechanisms that report to the Commission on Human Rights have individual communications and/or "urgent action" procedures, including the Special Rapporteur of the Commission on Human Rights on violence against women, its causes and consequences; the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions; the Special Rapporteur of the Commission on Human Rights on the human rights of migrants; the Special Rapporteur of the Commission on Human Rights on the right to freedom of opinion and expression; and the Special Representative of the Secretary-General on the situation of human rights defenders.[11] The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women also provides a communications procedure for individuals or groups of individuals under the jurisdiction of a State party to the Optional Protocol. If a gender-specific "situations" mechanism was adopted, there would be a need to coordinate with the 1503 procedure, inter alia, with regard to sharing of information and avoiding possible duplication. If a thematic rapporteur was appointed, it would be important to ensure that the mandate did not overlap with existing mandates.

47. The Commission on the Status of Women may wish to base any decisions for future action on the consideration of the approaches described in paragraphs 42-46 above.

Notes

[1] At its substantive session of 2001, the Economic and Social Council, in its decision 2001/317 entitled "Documents considered by the Economic and Social Council in connection with social and human rights questions", took note of the report of the Commission on the Status of Women on its forty-fifth session, which included Commission decision 45/103.

[2] Economic and Social Council resolution 1235 (XLII) forms the basis of the public debate on alleged violations of human rights in specific countries, which takes place at the annual sessions of the Commission on Human Rights and the Subcommission on the Promotion and Protection of Human Rights.

[3] Prior to that report, the communications procedure of the Commission on the Status of Women had been reviewed by the Commission in 1991 (see the report of the Secretary-General on examining existing mechanisms for communications on the status of women (E/CN.6/1991/10)). See also the report of the Secretary-General on measures to publicize the communications mechanisms of the Commission (E/CN.6/1994/8).

[4] Replies were received from Argentina, Belgium on behalf of the European Union (EU), Canada, China, Mexico and the Russian Federation.

[5] General Assembly resolution 54/4, annex.

[6] General Assembly resolution 34/180, annex.

[7] *Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995* (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1, annex II.

[8] General Assembly resolution S-23/2, annex.

[9] In response to a request for advice on this practice, the Office of Legal Affairs of the United Nations Secretariat indicated that, in its view:

> "The practice ... is anticipated by a number of resolutions of the Economic and Social Council. In particular, Economic and Social Council resolution 1983/27, entitled 'Communications concerning the status of women', anticipates that both confidential and non-confidential communications on the status of women will be forwarded to the Commission on the Status of Women from other United Nations bodies. In paragraph 2 of that resolution, the Council requests the Secretary-General to submit to the Commission 'a report on confidential and non-confidential communications on the status of women, which shall include ... communications received by the specialized agencies, regional commissions and other United Nations bodies, together with information on action that may have been taken following the receipt of such communications'.
>
> "Further, in section I, entitled 'Communications concerning the Status of Women', of its resolution 304 (XI) entitled 'Report of the Commission on the Status of Women (fourth session)', the Economic and Social Council decided, inter alia, to amend paragraph (b) of Council resolution 76 (V), which provided the procedure with regard to confidential communications for the Commission on the Status of Women. This was amended so that confidential communications, *however addressed* (emphasis added), might be included in information to be provided to members of the Commission. As such, the current practice of sharing confidential communications between the Commission on Human Rights and the Commission on the Status of Women is not only acceptable but, in light of the above resolutions, to be expected."

[10] One of the arguments in favour of this has been that there have not been any cases involving gender-specific violations that have been forwarded to the Commission on Human Rights under the 1503 procedure. One way to address that problem would be to make efforts to ensure that gender-related violations were taken up appropriately under the 1503 procedure.

[11] See, for example, the addendum to the report of the Special Rapporteur on violence against women, its causes and consequences (E/CN.4/2001/73/Add.1), which contains communications to and from Governments.